

SERIAL 01120 - RFP ELECTRONIC PRODUCTS AND SERVICES

APRIL 30, 2007
CONTRACT PERIOD THROUGH ~~APRIL 30 2005~~

TO: All Departments

FROM: Department of Materials Management

SUBJECT: Contract for **ELECTRONIC PRODUCTS AND SERVICES**

Attached to this letter is published an effective purchasing contract for products and/or services to be supplied to Maricopa County activities as awarded by Maricopa County on **March 13, 2003**.

All purchases of products and/or services listed on the attached pages of this letter are to be obtained from the vendor holding the contract. Individuals are responsible to the vendor for purchases made outside of contracts. The contract period is indicated above.

Wes Baysinger, Director
Materials Management

DL/mm
Attach

Copy to: Clerk of the Board
 Susan Varscsak, Library District
 Mirheta Muslic, Materials Management



CONTRACT FOR SERVICES PURSUANT TO RFP

SERIAL 01120-RFP

This Contract is entered into this 13th day of March 2003 by and between Maricopa County Library District (“County”) and a political subdivision of the State of Arizona, Participating Library and AccuWeather, Inc., a Pennsylvania corporation (“Contractor”) for the purchase of Electronic Products and Services.

1.0 TERM

- 1.1 This Contract is for a term of twenty-five (25) months and eight (8) days, beginning on the 13th day of March 2003 and ending the 30th day of April ~~2005~~ **2007**. A participating Library may participate on an annual basis during this period upon submission of a written purchase order as set forth in Section 4.3 and an executed Participating Library Agreement attached hereto and incorporated herein as Exhibit “C.”
- 1.2 The County may, at its option and with the agreement of the Contractor, extend the period of this Contract for additional one (1) year terms up to a maximum of two (2) additional terms. The County shall notify the Contractor in writing of its intent to extend the Contract period at least thirty (30) calendar days prior to the expiration of the original contract period, or any additional term thereafter.

2.0 PAYMENT

- 2.1 As consideration for performance of the duties described herein, County shall pay Contractor the sum stated in Final Pricing, attached hereto and incorporated herein as Pricing Agreement, Exhibit “A”.
- 2.2 Invoices shall be prepared and submitted in accordance with the instructions provided on the purchase order. Invoices shall contain the following information: contact number, purchase order number, description of services, unit prices, and extended totals and applicable sales/use tax.

3.0 DUTIES

- 3.1 The County, Participating Library and Contractor shall perform all duties stated in the Subscriber Agreement, attached hereto and incorporated herein as Exhibit “B.”

4.0 TERMS & CONDITIONS

4.1 INDEMNIFICATION AND INSURANCE:

4.1.1 Indemnification.

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the County, its agents, representatives, officers, directors, officials, and employees from and against all claims, damages, losses and expenses, including but not limited to attorney fees and costs, arising out of a claim that the Service used in accordance with this Contract infringes the copyright, trademark, or other intellectual property rights of a third party.

The scope of this indemnification does not extend to the negligence of the County.

4.2 NOTICES:

All notices given pursuant to the terms of this Contract shall be addressed to:

For County:

Maricopa County
Department of Materials Management
Attn: Director of Purchasing
320 West Lincoln Street
Phoenix, Arizona

For Contractor:

Attn: Bruce Ditnes
AccuWeather, Inc.
Greenwood Square 2
3331 Street Road, Suite 440
Bensalem, PA 19020

4.3 REQUIREMENTS CONTRACT:

Contractor signifies its understanding and agreement by signing this document, that this Contract is a requirements contract. This Contract does not guarantee any purchases will be made. Orders will only be placed when County and Participating Library identifies a need and issues a purchase order.

Contractor shall take no action under this Contract unless specifically requested by County, which shall submit a written purchase order to Contractor requesting that work be performed or product be delivered.

4.4 ESCALATION:

Any requests for reasonable price adjustments must be submitted thirty (30) days prior to the Contract expiration date. Requests for adjustment in cost of labor and/or materials must be supported by appropriate documentation. If County agrees to the adjusted price terms, County shall issue written approval of the change. The reasonableness of the request will be determined by comparing the request with the Producer Price Index or by performing a market survey.

4.5 TERMINATION:

County may unconditionally terminate this Contract for convenience by providing thirty (30) calendar days advance notice to the Contractor.

County may terminate this Contract if Contractor fails to pay any charge when due or fails to perform or observe any other material term or condition of the Contract, and such failure continues for more than ten (10) days after receipt of written notice of such failure from County, or if Contractor becomes insolvent or generally fails to pay its debts as they mature.

4.6 STATUTORY RIGHT OF CANCELLATION FOR CONFLICT OF INTEREST:

Notice is given that pursuant to A.R.S. § 38-511 the County may cancel this Contract without penalty or further obligation within three years after execution of the contract, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the County is at any time while the Contract or any extension of the Contract is in effect, an employee or agent of any other party to the Contract in any capacity or consultant to any other party of the Contract with respect to the subject matter of the Contract. Additionally, pursuant to A.R.S § 38-511 the County may recoup any fee or commission paid or due to any person significantly

involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the County from any other party to the contract arising as the result of the Contract.

4.7 OFFSET FOR DAMAGES;

In addition to all other remedies at law or equity, the County may offset from any money due to the Contractor any amounts Contractor owes to the County for damages resulting from breach or deficiencies in performance under this contract.

4.8 ADDITIONS/DELETIONS OF SERVICE:

The County reserves the right to add and/or delete products and/or services provided under this Contract. If a requirement is deleted, payment to the Contractor will be reduced proportionately to the amount of service reduced in accordance with the bid price. If additional services and/or products are required from this Contract, prices for such additions will be negotiated between the Contractor and the County.

4.9 SUBCONTRACTING:

The Contractor may not assign this Contract or subcontract to another party for performance of the terms and conditions hereof without the written consent of the County, which shall not be unreasonably withheld. All correspondence authorizing subcontracting must reference the Bid Serial Number and identify the job project.

4.10 AMENDMENTS:

All amendments to this Contract must be in writing and signed by both parties.

4.11 RETENTION OF RECORDS:

The Contractor agrees to retain all financial books, records, and other documents relevant to this Contract for five (5) years after final payment. The County, Federal or State auditors and any other persons duly authorized by the Department upon reasonable notice and during regular business hours shall have full access to, and the right to examine, copy and make use of, any and all said materials.

4.12 AUDIT DISALLOWANCES:

If at any time County determines that a cost for which payment has been made is not in accordance with this Contract, County shall notify the Contractor in writing of the difference. County shall also state the means of correction, which may be but shall not be limited to adjustment of any future claim submitted by the Contractor by the amount of the difference, or to require repayment of the amount by the Contractor.

4.13 VALIDITY:

The invalidity, in whole or in part, of any provision of the Contract shall not void or affect the validity of any other provision of this Contract.

4.14 RIGHTS IN DATA:

The County shall have the use of data and reports resulting from this Contract, if any, without additional cost or other restriction except as provided by law. Each party shall supply to the other party, upon request, any available information that is relevant to this Contract and to the performance hereunder.

4.15 INTEGRATION

This Contract represents the entire and integrated agreement between the parties and supersedes all prior negotiations, proposals, bids, communications, understandings, representations, or agreements, whether oral or written, express or implied.

IN WITNESS WHEREOF, this Contract is executed on the date set forth above.

CONTRACTOR

AUTHORIZED SIGNATURE

PRINTED NAME AND TITLE

ADDRESS

DATE

MARICOPA COUNTY

BY: _____
DIRECTOR, MATERIALS MANAGEMENT

DATE

BY: _____
CHAIRMAN, BOARD OF SUPERVISORS

DATE

ATTESTED:

CLERK OF THE BOARD

DATE

APPROVED AS TO FORM:

MARICOPA COUNTY ATTORNEY

DATE

**EXHIBIT A
PRICING**

SERIAL 01120-RFP

PRICING SHEET **S0274 02 / B0604225**

BIDDER NAME: AccuWeather, Inc. —~~AccuNet/AP Multimedia Archive~~
F.I.D./VENDOR #: ~~25-1291074~~ **W000001954 X**
BIDDER ADDRESS: ~~Greenwood Square 2, 3331 Street Road, Ste., 440 Bensalem, PA 19020~~
385 Science Park Road, State College, PA 16803-2215

P.O. ADDRESS:
BIDDER PHONE #: ~~888-438-9847, ext. 5363~~ **814/237-0309**
BIDDER FAX #: ~~215-244-5329~~
COMPANY WEB SITE: <http://ap.accuweather.com>
COMPANY CONTACT (REP): ~~Bruce Dittes~~ **Marsha Bergen**
E-MAIL ADDRESS (REP): Dittes@accuwx.com **bergen@accuwx.com**

ACCEPT PROCUREMENT CARD: _____ YES ___X___ NO

REBATE (CASH OR CREDIT) FOR UTILIZING PROCUREMENT CARD: _____ YES _____ NO _____ % REBATE

OTHER GOV'T. AGENCIES IN ADDITION TO THE LIBRARIES LISTED MAY USE THIS CONTRACT: _____ YES ___X___ NO

PAYMENT TERMS: _____ % _____ DAYS, OR Net 30 Days

SERIAL 02120-RFPACCUWEATHER

PRICING

- The Service known as the AccuNet™/AP Multimedia Archive shall consist of the Photo Archive, Graphics and Text News Files
- The individual libraries which comprise the Maricopa County Library District which may participate in this Agreement (the “Participating Libraries”) are as follows:

Library	Number of Locations	Card Holders
Chandler Public	3	83,000
Glendale Public	3	79,079
Maricopa County Library District	13	190,187
Mesa Public	3	133,342
Peoria	2	56,000
Phoenix	13	850,000
Scottsdale	4	142,000
Tempe	1	160,000
TOTALS	42	1,693,608

- For purposes of this Agreement and the Exhibits, a Participating Library shall be considered a Subscriber.
- The annual fee for Service per each Participating Library shall be as follows:

500,001	Up to 500,000	More than
<u>Holders</u>	<u>Card Holders</u>	<u>Card</u>
Library One (1)	\$3,500.	\$12,750.
Libraries Two (2), Three (3) and Four (4) each	\$2,100. each	\$7,650.
Libraries Five (5), Six (6) and Seven (7) each	\$1,750. each	\$6,375.
Library Eight (8)	\$1,575.	\$5,100.

In the event that all eight (8) libraries are active Participating Libraries and purchase Service pursuant to this Contract and are subject to Central Billing, the total annual fee for the Service for all of the Participating Libraries combined shall be \$14,900.

EXHIBIT B
SUBSCRIBER AGREEMENT

1. Subscriber shall be granted electronic access to the AP Photo Archive (products checked above) solely for the purpose of electronically viewing individual photographs and images in the Archive and making laser or desk jet prints of such content. Subscriber acknowledges that it understands that the image resolution of the Archive content, when printed, is 72 dots per inch. The Archive shall be used by Subscriber for the following purposes:
 - (1) Printed copies of images for book reports, term papers, theses, class handouts and research,
 - (2) "Power Point" type presentations, overhead projection, slide shows, and other similar multimedia presentations whose usage is confined to the licensed institution,
 - (3) Transmitting an individual image to a specific e-mail user,
 - (4) Archive photographs shall not be used or published in newspapers, magazines, brochures, catalogs, commercial announcements, calendars, posters, yearbooks, playbills, newsletters, on t-shirts, or promotional items, or for commercial use or gain of any kind.
 - (5) The content of the Archive shall be that normally provided by AccuWeather from time to time.
 - (6) Unless expressly authorized by AccuWeather in writing and subject to payment of additional licensing fees specified by AccuWeather, all other forms of access and use of the Archive and its constituent elements are expressly disallowed, including, by way of example and not limitation:
 - (a) accessing or using the Archive while being delinquent with respect to any applicable fees hereunder, or
 - (b) electronically downloading, manipulating or creating derivative works in any media except as allowed in this Agreement,
 - (c) electronically transmitting the Archive and/or its constituent elements, or other such activity, except as allowed in this Agreement
 - (7) In addition to the permitted uses described above, Subscriber may also allow Subscriber's users to access the Archive remotely [i.e., from off-site via computer]; provided that (i) only persons who are members (teachers/students/staff) of Subscriber shall be permitted to remotely access the Archive, (ii) each person remotely accessing the Archive shall count toward the maximum number of persons permitted to be logged on at any given time, and (iii) all of the terms and conditions applicable under this Agreement to users who access or view the Archive at Subscriber's premises shall apply to persons remotely accessing the Archive.
2. Subscriber hereby certifies that it is an educational institution or a public library. Subscriber agrees to use the Archive for educational interest and information only. Subscriber agrees not to use the Archive for any commercial or commercially related, business or business related, job or job related, purpose whatsoever except as specified herein.
3. The Subscriber acknowledges that subscriber has read and understands the AccuNet™/AP Multimedia Archive Participating Library Agreement and has had the opportunity to have it reviewed by legal counsel, it shall not be construed more strictly against one party than the other and the meanings and purposes attached to its various provisions shall be those reasonably intended by AccuWeather, Inc.
4. The parties, intending to be legally bound, have executed this agreement. The signers represent that they have full authority to execute this agreement on behalf of AccuWeather, Inc. And subscriber respectively and to legally bind same and that they have read and understand the important terms and conditions on the reverse side and which are a part of this agreement.
5. Service Terms and Conditions.

A. Equipment. Subscriber shall, at its own cost, obtain, maintain and operate all terminals, communication devices and other equipment needed for accessing the Archive. Subscriber acknowledges that AccuWeather shall not be liable for the suitability, delivery, performance or maintenance of any terminal or other equipment or for the hook-up of any terminal or equipment to suitable telephone lines or other communications links.

B. Access. During the term of this Agreement, AccuWeather will provide the Archive through communication facilities it may from time to time select and Subscriber shall have access rights to the Archive. Access to the Archive shall be authorized by AccuWeather to begin upon the Starting Date and end upon termination of this Agreement. Subscriber agrees that it shall receive the Archive only at the site(s) listed in this Agreement. Access Codes and information furnished by AccuWeather to Subscriber are intended for Subscriber's sole and exclusive use and shall be considered proprietary information, ownership of which shall remain with AccuWeather.

Subscriber shall be fully responsible for maintaining confidentiality of its account access information and for all charges made to its account. Should Subscriber's Access Information be lost, stolen, or fall into the hands of an unauthorized user or users, it is Subscriber's responsibility to immediately notify AccuWeather in writing.

C. Subscription Fees. Subscriber agrees to pay to AccuWeather the fee set forth on Attachment A of this Agreement. The fees may be invoiced yearly in advance. This is a fixed fee, lump sum contract. Payment shall be due and payable at AccuWeather's office in State College, Pennsylvania at the beginning of each contract month or contract year without notice. Failure of payment shall render due and payable all sums payable during the initial period of this Agreement and any subsequent renewal period plus a late payment charge of one and one-half percent per month. All prices stated herein are in U.S. dollars. Subscriber shall pay the fees that are due and owing under this Agreement to AccuWeather within 30 days from the date of invoice. If Subscriber fails to perform any of its obligations under this Agreement, including but not limited to, failure to pay the fees that are due and owing, AccuWeather will have the right to notify Subscriber of such failure and Subscriber will have 30 days to cure such failure. If the failure is not cured within the 30-day cure period, AccuWeather will have the right to terminate this Agreement at any time thereafter immediately upon notice to Subscriber.

D. Term. This Agreement shall remain in full force and effect for the period set forth in this Section 1.1.

E. Copyright, Storage and Ownership of Service. All information, data, images and other things comprising the Archive are to be considered copyrighted by AccuWeather or The Associated Press and they remain the sole and exclusive property of their owner. Subscriber is authorized to store such information during the time of the Agreement. Subscriber may not store for future use such information beyond that period, nor develop a library of such information. Upon termination of this Agreement all stored data shall be destroyed by Subscriber. Subscriber acknowledges that The Associated Press retains sole and exclusive right, title and interest in and to the copyrights for all photos in the Archive and understands and acknowledges that no title to or ownership in the photos or the Archive database itself are hereby transferred to Subscriber hereunder.

F. Intentionally deleted.

G. Assignability. Neither this Agreement nor any rights or obligations hereunder may be assigned by Subscriber without the express written consent of AccuWeather, Inc. and written acceptance of the contract by the Assignee. This Agreement constitutes the entire agreement between the parties. No collateral or prior statements, representations, understandings or agreements survive or are a part of this Agreement. No modifications to this Agreement shall be made except by written addendum signed by both parties hereto. The invalidity of any paragraph, subparagraph or portion of this Agreement shall not affect the validity of any other paragraph, subparagraph or portion hereof. The failure of AccuWeather to require the performance of any term of this Agreement or the waiver by AccuWeather of any breach under this Agreement shall not prevent a subsequent enforcement of such term by AccuWeather nor be deemed a waiver of any subsequent breach.

H. Performance. Subscriber hereby agrees that it will save harmless AccuWeather from all manner of suit, actions, damages, charges and expenses, including attorney and counsel fees. In the case of failure of payment by Subscriber, AccuWeather shall have the right to claim a sum equal to twenty-five percent of such payment due but not paid, that AccuWeather, may sustain by reason of Subscriber's failure to so perform this Agreement, Subscriber's breach of any of the terms, covenants or conditions of this Agreement or other claims against AccuWeather, Inc. arising from this Agreement as a liquidated amount for attorneys fees.

I. Damages. ACCU WEATHER AND THE ASSOCIATED PRESS WHICH OWNS THE ARCHIVE AND PROVIDES SUBSCRIBERS WITH ACCESS TO THE ARCHIVE HEREUNDER (TOGETHER, THE "PARTIES") EXPRESSLY DISCLAIM ANY RESPONSIBILITY OR LIABILITY FOR ANY LOSS, WHETHER DIRECT, CONSEQUENTIAL OR INDIRECT RESULTING TO SUBSCRIBER OR ANY THIRD PARTY FROM ERRORS OR OMISSIONS IN THE SYSTEM OR ARISING FROM ANY USE BY SUBSCRIBER OF ANY PHOTOS IN THE ARCHIVE. DELAYS IN PERFORMANCE, OR NON-PERFORMANCE CAUSED BY UNAVAILABILITY OF THE ARCHIVE OR ANY FORCE MAJEURE EVENT. IN NO EVENT WILL THE PARTIES BE LIABLE TO SUBSCRIBER FOR DIRECT, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR ANY OTHER TYPE OF DAMAGES, IN CONTRACT, TORT OR OTHERWISE, EVEN IF THE PARTIES SHALL HAVE BEEN ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH LOSS, COST OR DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT. THE PARTIES' SOLE LIABILITY TO SUBSCRIBER FOR FAILURE TO RECEIVE ACCESS TO THE ARCHIVE PURSUANT TO THIS AGREEMENT OR INABILITY TO USE THE ARCHIVE AS AUTHORIZED HEREUNDER, SHALL BE LIMITED TO THE FEE PAID BY SUBSCRIBER TO ACCU WEATHER HEREUNDER.

J. Warranties. THE PARTIES HEREBY DISCLAIM ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, CONCERNING ANY PRODUCTS OR SERVICES PROVIDED HEREUNDER, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR IMPLIED WARRANTY OF NON-INFRINGEMENT. THE ARCHIVE IS BEING PROVIDED TO SUBSCRIBER ON AN "AS IS" BASIS.

K. Headings and Captions. The headings and captions used in this Agreement are for convenience only, they are not to be considered a part of the Agreement; they in no way define, limit, or describe the scope of intent of the paragraphs of this Agreement nor in any way affect this Agreement.

L. AP's Status. AP is an express third party beneficiary of the rights afforded AccuWeather hereunder.

EXHIBIT C
PARTICIPATING LIBRARY AGREEMENT

ACCUNET™/AP® MULTIMEDIA ARCHIVE

Name of Subscriber: _____

Street Address: _____

City, State and Zip Code: _____

AccuNet™/AP® Multimedia Archive Products: Select desired products being received or ordered:

- ☐ Photo Archive
- ☐ Graphics
- ☐ Audio
- ☐ Text

Confirmation of Number of Concurrent Users: _____

Participating Library (**list out names and location if applicable**): _____

Contract Price: \$ _____ per year.

Effective Date for New Services/Pricing: _____

Signature of Authorized Subscriber Representative: _____

Name of Authorized Subscriber Representative (**please print**): _____

Title of Authorized Subscriber Representative: _____

Signature Date: _____

Sales Person Contact: _____

**Once complete, please fax this AccuNet™/AP® Multimedia Archive Participating Library Agreement to:
(215)244-5329. Your continued interest in the AccuNet™/AP® Multimedia Archive is appreciated.**

ACCUWEATHER INC, 385 SCIENCE PARK ROAD, STATE COLLEGE, PA 16803-2215

PRICING SHEET S0274 02 / B0604225

Terms:	NET 30
Vendor Number:	251291071 W000001954 X
Telephone Number:	814/235-8546 814/237-0309
Fax Number:	814/235-8549
Contact Person	Bruce Ditnes Marsha Bergen
E-Mail Address (REP)	Ditnes@accuwx.com bergen@accuwx.com
Insurance Certificate	Required
Contract Period:	To cover the period ending April 30, 2005 2007.